IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
TUESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE G. BIKSHAPATHY
and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 945 of 2004

Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10/02/2003 in WP NO : 2424 OF 2003 on the file of the High Court.

Between:

1 Regional Manager
APSRTC Nizamabad
2 Depot Manager, Bus Depot
APSRTC Banswada, Nizamabad Dist

.....
APPELLANTS

AND

B.Chander Rao S/o late Hanmanth Rao
Tekkadaplly (KD) Post: Fatlapoor Mandal,
Buchkunda, Nizamabad Dist

.....RESPONDENT

Standing Counsel for the Appellants: MR.K.HARINATH

Counsel for the Respondent : MR.V.NARASIMHA GOUD

The Court Made the Following :

THE HON'BLE MR. JUSTICE G. BIKSHAPATHY
AND
THE HON'BLE MR. JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO. 945 OF 2004

ORAL ORDER : (per G.B., J.,)

This Writ Appeal is filed, assailing the order passed by the learned single Judge in W.P.No.2424 of 2003, dated 10-03-2003.

2. The Writ Petition was filed seeking direction to the A.P.S.R.T.C. to grant notional increments for the period from 27.7.1987 till September, 1994 and re-fixing the salary adding notional increments.

3. The respondent was working as Conductor in A.P.S.R.T.AC. and he was removed from service on certain cash and ticket irregularities. Thereafter, he raised industrial dispute in I.D.No.292 of 1992 before the Labour Court-II, Hyderabad. The learned Tribunal passed an award on 14-06-1994, setting aside the removal and directing to reinstate the petitioner into service without break in service but without back wages. Consequently,

the employee was reinstated, but, however, his pay was not fixed properly, adding the notional increments. Therefore, the Writ Petition was filed.

4. The learned single Judge after considering the matter, disposed of the Writ Petition following the Division Bench judgment of this Court, directing the authorities to fix the pay of the petitioner taking into consideration the notional increments. The said order is assailed before this Court

5. The learned counsel for the APSRTC, however, relies on the decision of the Supreme Court in ***A.P.S.R.T.C AND ANOTHER v. S.NARSAGOUD***[1] and the decision of the Division Bench of this Court in Writ Appeal No.567 of 2003, dated 8-4-2003. In those cases the employee was removed from service on the ground of unauthorized absence and under those circumstances, the Supreme Court held that the employee is not entitled for increments for the period he was under unauthorized absence unless the same is regularized in accordance with the Rules. But in the instant case, the employee is removed from service for his misconduct and which was held to be not justified by the Labour Court. Therefore, the facts of this case are distinguishable to that of the facts in the cited cases. However, the learned counsel for the employee relies on the decision of the Supreme Court reported in ***DEVENDRA PRATAP NARAIN RAI SHARMA v. STATE OF U.P.*** [2] wherein it was held as follows:-

> " This rule has no application to cases like the present in which the dismissal of a public servant is declared in valid by a civil Court and he is reinstated. This rule undoubtedly enables the State Government to

fix the pay of a public servant whose dismissal is set aside in a departmental appeal. But in this case, the order of dismissal was declared in valid in a civil suit. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil Court is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had been permitted to work."

6. We are afraid, we cannot accept the contention raised by the learned counsel for appellants. Since the Labour Court only denied the back wages and maintained continuity of service, the employee is entitled for notional increments and the Tribunal has correctly granted the same, which was confirmed by the learned single Judge. Hence, we do not find to interfere with the order dated 10-02-2003 in W.P.No.2424 of 2003 passed by the learned single Judge.

7. In the result, the Writ Appeal is dismissed. No costs.

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DEPUTY

REGISTRAR

22nd June, 2004

kvr

// true copy //

Section Officer

To

1 Regional Manager
APSRTC Nizamabad
2 Depot Manager, Bus Depot
APSRTC Banswada, Nizamabad Dist
3 Two C.D.Copies.

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1 (2003) 2 S.C.C. 212

2 (ILLJ (S.C.) 1962)